Taumata Arowai–the Water Services Regulator Bill

Government Bill

Explanatory note

General policy statement

This Bill implements the Government's decision to create a new regulatory body to oversee, administer, and enforce the drinking water regulatory system. The Bill establishes Taumata Arowai–the Water Services Regulator (**Taumata Arowai**) as a new Crown agent and provides for its objectives, functions, operating principles, and governance arrangements.

The Bill is part of a broader package of reforms to the three waters regulatory system. It will be complemented by a separate Bill that will give effect to decisions to implement system-wide reforms to the regulation of drinking water and source water, and targeted reforms to improve the regulation and performance of wastewater and stormwater networks.

The approaches provided for in the Bill, and in the broader package of regulatory reforms, are intended to address issues and opportunities that were highlighted in the Government Inquiry into Havelock North Drinking Water and in the Government's Three Waters Review. These reforms are designed to—

- provide clear leadership for drinking water regulation, through a new, dedicated, centralised regulator:
- significantly strengthen compliance, monitoring, and enforcement relating to drinking water regulation, and equip the new regulator with the powers and resources needed to build capability, support suppliers of all kinds to meet their regulatory obligations, and take a tougher, more consistent approach to enforcement where needed:
- manage risks to drinking water safety and ensure that source waters are protected:

- ensure that more people can access water that is safe to drink, by requiring all suppliers (except individual domestic self-suppliers) to be part of the regulatory system, and to provide safe drinking water on a consistent basis:
- improve the environmental performance and transparency of wastewater and stormwater networks:
- improve national-level leadership, oversight, and support relating to wastewater and stormwater.

These intentions are reflected throughout the Bill, including in Taumata Arowai's objectives, functions, and operating principles.

The objectives and operating principles are designed to guide and inform how Taumata Arowai carries out its functions and duties. Many of the operating principles have an outward focus, relating to engagement and relationship-building with consumers and regulated parties, including Māori. There is also a strong focus on building and maintaining expertise and capability, both within Taumata Arowai itself and across the water services sector. This approach will help to build confidence in the safety of drinking water and in the overarching regulatory system.

Taumata Arowai will be a Crown agent. This is intended to achieve the necessary step-change from the status quo, and provide an appropriate form for a regulator that will deal with highly technical matters and have a significant emphasis on compliance and enforcement. Being a Crown agent will help Taumata Arowai to build credibility, have a dedicated, sustained focus on drinking water, and recruit highly skilled people. Taumata Arowai will have sufficient independence to protect the integrity of its decision making.

As a Crown agent, Taumata Arowai will have a governance board. It will also need to act consistently with the principles of the Treaty of Waitangi. One of the duties of the board is to ensure that Taumata Arowai maintains the systems and processes that enable it to act consistently with these principles, and to engage with Māori and understand perspectives of Māori.

The Bill provides for the establishment of a Māori Advisory Group to advise Taumata Arowai on Māori interests and knowledge, as they relate to the objectives, functions, and operating principles of Taumata Arowai, and the duties of the board. The role of the Māori Advisory Group includes providing advice on how to interpret and give effect to Te Mana o te Wai, and how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised. The intent is to ensure that Māori interests and knowledge are embedded throughout Taumata Arowai.

Te Mana o te Wai is not defined in the Bill. It is intended that the Māori Advisory Group will develop and maintain a framework that provides advice and guidance for Taumata Arowai on how to interpret and give effect to Te Mana o te Wai. This approach provides flexibility, and enables interpretations to change over time and adapt to different circumstances.

Departmental disclosure statement

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=202

Regulatory impact assessment

The Department of Internal Affairs produced a regulatory impact assessment on 30 September 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/$file/Regulatory-Impact-Assessment-decision-on-the-organisational-form-of-a-new-drinking-water-regulator.pdf
- http://www.treasury.govt.nz/publications/informationreleases/ria

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill, other than *clauses 10(b) and 11(e)*, comes into force on the day on which it receives the Royal assent. *Clauses 10(b) and 11(e)* come into force on the earlier of a date set by Order in Council, and 1 July 2021. These 2 clauses have a delayed commencement because Taumata Arowai will not take over as the actual regulator of the drinking water regulatory system until the repeal of Part 2A of the Health Act 1956 by a separate, planned, future Bill. These 2 clauses will come into force at the same time as Part 2A is repealed.

Part 1
Preliminary provisions

Clause 3 states the purpose of the Bill as being to establish Taumata Arowai–the Water Services Regulator and provide for its objectives, functions, and governance arrangements.

Clause 4 defines certain terms used in the Bill.

Clause 5 sets out how the Bill recognises and respects the Crown's responsibility to consider and provide for Māori interests.

Clause 6 provides that the transitional, savings, and related provisions set out in *Schedule 1* have effect according to their terms.

Clause 7 provides that the Bill binds the Crown.

Part 2
Establishment, objectives, functions, and operation of Taumata Arowai–the Water Services Regulator

Subpart 1—Establishment, objectives, and functions of Taumata Arowai

Clause 8 establishes Taumata Arowai–the Water Services Regulator (**Taumata Arowai**).

Clause 9 provides that Taumata Arowai is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. That Act applies to Taumata Arowai unless otherwise expressly provided in the Bill.

Clause 10 sets out the statutory objectives of Taumata Arowai.

Clause 11 sets out the general functions of Taumata Arowai.

Subpart 2—Board of Taumata Arowai, and Māori Advisory Group

Board

Clause 12 provides that the board of Taumata Arowai is to consist of not fewer than 5, and not more than 7, members. In appointing members, the responsible Minister must ensure that the members collectively have knowledge and experience of, and capability in specified matters.

Clause 13 enables the board to delegate any of its functions or powers in accordance with section 73 of the Crown Entities Act 2004, except the power to appoint or remove the chief executive.

Māori Advisory Group

Clause 14 establishes the Māori Advisory Group, which is to consist of not fewer than 5, and not more than 7, members.

Clause 15 sets out the process for appointing members of the Māori Advisory Group. Appointments are to be made by the responsible Minister.

Clause 16 applies certain provisions of the Crown Entities Act 2004 to members of the Māori Advisory Group, including provisions relating to their term of office and removal from office, and provides for the remuneration of members.

Clause 17 sets out the role of the Māori Advisory Group. The group's role is to advise the board and Taumata Arowai on Māori interests and knowledge, as they relate to the objectives, functions, and operating principles of Taumata Arowai and the collective duties of the board. This role includes developing and maintaining a framework that provides advice and guidance for Taumata Arowai on how to interpret and give effect to Te Mana o te Wai.

The Bill does not define Te Mana o te Wai. It is expected that the Māori Advisory Group will advise the board and Taumata Arowai on how to interpret and give effect to Te Mana o te Wai.

Subpart 3—Operations of Taumata Arowai

Clause 18 states operating principles to guide and inform Taumata Arowai in its performance and delivery of its objectives, functions, and duties. An associated provision in *clause 19* requires the board to ensure that Taumata Arowai acts in a manner consistent with the operating principles.

Clause 19 states additional duties that are collective duties of the board.

Part 3
Miscellaneous provisions

Clause 20 amends the Ombudsmen Act 1975 and the Crown Entities Act 2004 as indicated in *Schedule 2*. The effect of these amendments is to make Taumata Arowai an organisation for the purposes of the Official Information Act 1982 and a Crown agent (for example, like Kāinga Ora–Homes and Communities) for the purposes of the Crown Entities Act 2004.

Hon Nanaia Mahuta

Taumata Arowai–the Water Services Regulator Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taumata Arowai–the Water Services Regulator Act **2019**.

2 Commencement

(1) This Act (except **sections 10(b) and 11(e)**) comes into force on the day on which it receives the Royal assent.

(2) **Sections 10(b) and 11(e)** come into force on the earlier of—

(a) a date appointed by the Governor-General by Order in Council; and

(b) **1 July 2021**.

(3) One or more Orders in Council may be made under **subsection (2)(a)** appointing different dates for different provisions.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to establish Taumata Arowai–the Water Services Regulator and provide for its objectives, functions, and governance arrangements.

4 Interpretation

In this Act, unless the context otherwise requires,—

board means the board of Taumata Arowai–the Water Services Regulator

council-controlled organisation has the meaning given to it by section 6 of the Local Government Act 2002

domestic self-supplier means a stand-alone or single domestic dwelling that has its own supply of water

Examples

A single rental property that is supplied by a rainwater tank is a domestic self-supplier.

A separate dwelling provided on a farm for farm workers that is supplied with water from the farm's own bore water supply is not a domestic self-supplier.

A multi-dwelling building (for example, multiple separate apartments contained in a single building) that has its own bore water supply is not a domestic self-supplier.

A marae wharekai or community hall that has its own river water supply is not a domestic self-supplier.

A café building supplied by a rainwater tank is not a domestic self-supplier.

drinking water—

(a) means water that is available to consumers from a point of supply, and used, for—

(i) human consumption; or

(ii) oral hygiene; or

(iii) the preparation of food, drink, or other products for human consumption; or

(iv) washing utensils that are used for eating and drinking, or for preparing, serving, or storing food or drink for human consumption; but

(b) does not include bottled water that is prepared or manufactured by a food business and is regulated under the Food Act 2014

drinking water supplier—

(a) means a person who supplies drinking water to consumers through a drinking water supply scheme; and

(b) includes the owner and the operator of a drinking water supply scheme; and

(c) includes a drinking water supplier who supplies drinking water to another drinking water supplier; but

(d) does not include a domestic self-supplier

regulated party means a drinking water supplier, a wastewater network operator, and a stormwater network operator

responsible Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

road controlling authority has the meaning given to it by section 2(1) of the Land Transport Act 1998

stormwater network—

(a) means the infrastructure and processes that are used to collect, treat, drain, and discharge stormwater from a built area or transport corridor; but

(b) does not include drainage works located in a non-urban area

stormwater network operator means a local authority, council-controlled organisation, subsidiary of a council-controlled organisation, or road controlling authority that operates a stormwater network

Taumata Arowai means Taumata Arowai–the Water Services Regulator established by **section 8**

wastewater network means the infrastructure and processes that are used to collect, transmit through reticulation, treat, and discharge wastewater

wastewater network operator means a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation that operates a wastewater network.

5 Māori interests

In order to recognise and respect the Crown's responsibility to consider and provide for Māori interests,—

(a) **section 10** provides that it is an objective of Taumata Arowai to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the functions and duties of Taumata Arowai:

(b) **section 12** provides that the board must include members who, collectively, have knowledge and experience of, and capability in,—

  (i) the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and

  (ii) perspectives of Māori and tikanga Māori:

(c) **section 14** establishes the Māori Advisory Group:

(d) **section 17(1) and (2)** provides that the role of the Māori Advisory Group is to advise on Māori interests and knowledge, which includes—

  (i) developing and maintaining a framework on how to interpret and give effect to Te Mana o te Wai; and

  (ii) providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised:

(e) **section 17(3)** requires the board to—

(i) have regard to the advice of the Māori Advisory Group; and

(ii) demonstrate in its annual report how it has had regard to this advice:

(f) **section 18** provides that the operating principles of Taumata Arowai include—

(i) building and maintaining credibility and integrity, so that Taumata Arowai is trusted by Māori (among others); and

(ii) partnering and engaging early and meaningfully with Māori, including to inform how Taumata Arowai can—

(A) give effect to Te Mana o te Wai; and

(B) understand, support, and enable the exercise of mātauranga Māori and tikanga Māori and kaitiakitanga:

(g) **section 19** requires the board to maintain systems and processes to ensure that, for the purposes of carrying out its functions under this Act, Taumata Arowai has the capability and capacity—

(i) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and

(ii) to engage with Māori and to understand perspectives of Māori.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown.

Part 2
Establishment, objectives, functions, and operation of Taumata Arowai–the Water Services Regulator

Subpart 1—Establishment, objectives, and functions of Taumata Arowai

8 Taumata Arowai–the Water Services Regulator established

This section establishes Taumata Arowai–the Water Services Regulator.

9 Taumata Arowai is Crown entity

(1) Taumata Arowai is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

(2) The Crown Entities Act 2004 applies to Taumata Arowai except to the extent that this Act expressly provides otherwise.

10 Objectives of Taumata Arowai

Taumata Arowai's objectives are to—

(a) protect and promote drinking water safety and public health outcomes; and

(b) effectively administer the drinking water regulatory system; and

(c) build and maintain capability among drinking water suppliers and across the wider industry; and

(d) give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the functions and duties of Taumata Arowai; and

(e) provide oversight of, and advice on, the regulation, management, and environmental performance of wastewater and stormwater networks; and

(f) promote public understanding of the environmental performance of wastewater and stormwater networks.

11 Functions of Taumata Arowai

Taumata Arowai's general functions are to—

(a) provide national-level oversight, leadership, communication, and co-ordination in relation to—

(i) drinking water safety and regulation, including the management of risks to sources of drinking water; and

(ii) the environmental performance, management, and regulation of wastewater and stormwater networks; and

(b) identify and monitor matters that affect the safety of drinking water, and the environmental performance of wastewater and stormwater networks, including current and emerging contaminants; and

(c) develop standards that relate to drinking water composition and develop other regulatory requirements and measures necessary to fulfil its responsibilities under this or any other enactment; and

(d) provide oversight of, and information to central and local government in relation to,—

(i) the development, operation, and effectiveness of standards, regulations, and other statutory requirements for wastewater and stormwater; and

(ii) compliance with, monitoring of, and enforcement of standards, regulations, and other statutory requirements affecting wastewater networks, stormwater networks, wastewater network operators, and stormwater network operators; and

(e) monitor and enforce compliance with relevant drinking water legislation and standards, and other regulatory requirements for which Taumata Arowai has responsibility; and

(f) facilitate, promote, or support research, education, and training, to support drinking water safety and regulation, the management of risks to sources of drinking water, and the environmental performance, management, and regulation of wastewater and stormwater networks; and

(g) build and maintain the capability of drinking water suppliers to fulfil their regulatory responsibilities; and

(h) provide guidance, advice, or information on matters that relate to drinking water safety and regulation, the management of risks to sources of drinking water, and the environmental performance, management, and regulation of wastewater and stormwater networks; and

(i) identify, prepare, or promote national guidelines and good practices that relate to—

(i) drinking water; and

(ii) wastewater networks, stormwater networks, wastewater network operators, and stormwater network operators; and

(j) perform or exercise the functions, duties, and powers conferred or imposed on it by this Act or any other enactment; and

(k) perform any other functions or activities that are consistent with its objectives and that Taumata Arowai considers are necessary or desirable to enable the achievement of those objectives, except functions or activities performed by any central government agency or another regulator; and

(l) perform any other functions relevant to its objectives that the responsible Minister directs in accordance with section 112 of the Crown Entities Act 2004.

Subpart 2—Board of Taumata Arowai, and Māori Advisory Group

Board

12 Board

(1) The board consists of not fewer than 5, and not more than 7, members.

(2) The responsible Minister must appoint members to the board who, collectively, have knowledge and experience of, and capability in,—

(a) the compliance, monitoring, and enforcement activities of regulatory agencies; and

(b) public health, particularly in relation to the objectives and functions of Taumata Arowai; and

(c) the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and

(d) perspectives of Māori and tikanga Māori; and

(e) performance monitoring and governance.

13 Board's power to delegate

The board may delegate any of its functions or powers in accordance with section 73 of the Crown Entities Act 2004, except the power to appoint or remove the chief executive.

Māori Advisory Group

14 Māori Advisory Group established

(1) This section establishes the Māori Advisory Group.

(2) The Māori Advisory Group consists of not fewer than 5, and not more than 7, members.

15 Appointment of members of Māori Advisory Group

(1) The responsible Minister must appoint members to the Māori Advisory Group.

(2) The responsible Minister must consult the Ministers with portfolio responsibilities that relate to Māori Development and Māori Crown Relations before making any appointments.

(3) The responsible Minister must appoint 1 of the members as chairperson of the Māori Advisory Group.

(4) The responsible Minister must appoint only persons who, in the responsible Minister's opinion, have the appropriate knowledge, skills, and experience to assist the Māori Advisory Group to perform its role (*see* **section 17**).

(5) No member of the board may be appointed to the Māori Advisory Group.

16 Further provisions relating to Māori Advisory Group

(1) The following provisions of the Crown Entities Act 2004 apply to members of the Māori Advisory Group as if they were members of the board of a Crown agent:

- (a) section 28 (method of appointment of members):
- (b) section 30 (qualifications of members):
- (c) section 31 (requirements before appointment):
- (d) section 32 (term of office of members):
- (e) section 35 (validity of appointments):
- (f) section 36 (removal of members of Crown agents):
- (g) section 41 (process for removal):
- (h) section 43 (no compensation for loss of office):
- (i) section 44 (resignation of members):
- (j) section 45 (members ceasing to hold office).

(2) The members are entitled to—

(a) receive remuneration, in accordance with the fees framework; and

(b) be reimbursed for actual and reasonable travelling expenses incurred in carrying out their roles as members.

17 Role of Māori Advisory Group

(1) The role of the Māori Advisory Group is to advise the board and Taumata Arowai on Māori interests and knowledge, as they relate to the objectives, functions, and operating principles of Taumata Arowai and the collective duties of the board.

(2) That role includes—

(a) developing and maintaining a framework that provides advice and guidance for Taumata Arowai on how to interpret and give effect to Te Mana o te Wai; and

(b) providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised; and

(c) any other matters requested by the board.

(3) The board must—

(a) have regard to the advice of the Māori Advisory Group; and

(b) demonstrate how it has had regard to that advice in Taumata Arowai's annual report, prepared under section 150 of the Crown Entities Act 2004.

(4) The board and the Māori Advisory Group, acting jointly, must—

(a) prepare a memorandum of understanding, setting out how they will work together; and

(b) prepare and agree the terms of reference for the Māori Advisory Group.

(5) Taumata Arowai must publish the memorandum of understanding and the terms of reference on Taumata Arowai's website.

(6) The board and the Māori Advisory Group, acting jointly, must review both the memorandum of understanding and the terms of reference at intervals of not more than 3 years.

Subpart 3—Operations of Taumata Arowai

18 Operating principles

(1) Taumata Arowai must ensure that its performance and delivery of its objectives, functions, and duties are guided and informed by the operating principles set out in **subsection (2)**.

(2) The operating principles are—

(a) building and maintaining credibility and integrity, so that Taumata Arowai is trusted by consumers, regulated parties, Māori, and government:

(b) ensuring that Taumata Arowai has suitable expertise to build and maintain confidence in its capability as a regulator:

(c) developing sector capability, by promoting collaboration, education, and training:

(d) partnering and engaging meaningfully with other people and organisations:

(e) partnering and engaging early and meaningfully with Māori, including to inform how Taumata Arowai can—

(i) give effect to Te Mana o te Wai; and

(ii) understand, support, and enable the exercise of mātauranga Māori and tikanga Māori and kaitiakitanga.

19 Additional collective duties of board

(1) The board must ensure that Taumata Arowai—

(a) acts in a manner consistent with the operating principles in **section 18**; and

(b) maintains systems and processes to ensure that, for the purposes of carrying out its functions under this Act, Taumata Arowai has the capability and capacity—

(i) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and

(ii) to engage with Māori and to understand perspectives of Māori.

(2) The duties in **subsection (1)**—

(a) apply in addition to the duties of the board in sections 49 to 52 of the Crown Entities Act 2004; and

(b) are collective duties owed to the responsible Minister for the purposes of section 58 of the Crown Entities Act 2004.

Part 3
Miscellaneous provisions

20 Consequential amendments

Amend the Acts specified in **Schedule 2** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

Transfer of contracts

1 Transfer of contracts to Taumata Arowai

(1) This clause applies to a contract (other than an employment agreement) that—

(a) was made between the Department of Internal Affairs (the **DIA**) and another person before the commencement of this clause; and

(b) is identified by the DIA as relating principally or solely to the operation of Taumata Arowai, or to a matter for which Taumata Arowai assumes responsibility, on the commencement of this clause.

(2) On and after the commencement of this clause,—

(a) the contract must be treated as if Taumata Arowai were the party to the contract instead of the DIA; and

(b) unless the context otherwise requires, every reference in the contract to the DIA must be read as a reference to Taumata Arowai.

2 Consequences of transfer of contracts to Taumata Arowai

(1) This clause applies only in relation to a contract transferred to Taumata Arowai under **clause 1**.

(2) On and from the commencement of **clause 1**,—

(a) all rights, liabilities, and entitlements of the DIA under the contract become the rights, liabilities, and entitlements of Taumata Arowai; and

(b) anything done, or omitted to be done, or that is to be done, by, or in relation to, the DIA is to be treated as having been done, or omitted to be done, or to be done, by, or in relation to, Taumata Arowai; and

(c) the commencement, continuation, or enforcement of proceedings by or against the DIA may instead be carried out by or against Taumata Arowai without amendment to the proceedings.

Sharing or transfer of information

3 Sharing or transfer of information relating to Part 2A of Health Act 1956

(1) Despite anything in any other Act, a transferor may, at any time on or after the commencement of this clause, share with, or transfer to, Taumata Arowai any information held by the transferor immediately before the commencement of

this clause that relates to the performance or exercise of functions, duties, or powers under Part 2A of the Health Act 1956.

(2) Sharing, or a transfer of, information under **subclause (1)** is not an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

(3) In this clause, **transferor** means—

(a) the Ministry of Health:

(b) the Director-General of Health:

(c) designated officers (as defined in section 69G of the Health Act 1956):

(d) drinking-water assessors appointed under section 69ZK of the Health Act 1956:

(e) employers of designated officers and drinking-water assessors.

Schedule 2
Consequential amendments to other Acts

s 20

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 1, insert in its appropriate alphabetical order:

Name	Exemption from acquisition of financial products, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Taumata Arowai–the Water Services Regulator					

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Taumata Arowai–the Water Services Regulator

Wellington, New Zealand:
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